80-184

No.

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1980

THE PEOPLE OF THE STATE OF ILLINOIS,

Petitioners,

vs.

JAMES DOWDELL,

Respondent.

Appeal from the Appellate Court Third District No. 78-486

Original Appeal from the Circuit Court of the Twelfth Judicial Circuit Will County, Illinois No. W78-C-115

Honorable ANGELO F. PISTILLI Judge Presiding

PETITION FOR A WRIT OF CERTIORARI

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* The opinion of the Appellate Court of Illinois, Third Judicial District, is presented in Appendix A to this petition in "slip opinion" form which is the form of the opinion as initially released by the appellate court as a proposed opinion subject to revision. At the time of the filing of this petition, the reporter of decisions had not yet published the official report containing the opinion in this case. However, the clerk of the appellate court has indicated no changes were made to the slip opinion attached hereto before it was sent to the reporter of decisions for publication.

TABLE OF AUTHORITIES

	Pages
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PETITION FOR A WRIT OF CERTIORARI

QUESTION PRESENTED FOR REVIEW

Had the Illinois Appellate Court had benefit of this Court's decision in *United States* v. *Mendenhall,* ____ U.S. ____, ____ L. Ed. 2d ____, 100 S. Ct. 1870 (1980), would it still have decided that defendant was unlawfully seized and detained within the meaning of *Dunaway* v. *New York,* 442 U.S. 200, 60 L. Ed. 2d 824, 99 S. Ct. 2248 (1979), or would it have recognized that defendant voluntarily accompanied the officers to the stationhouse within the framework of *Mendenhall,* so that his later statements and evidence obtained should not have been suppressed?

OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 81 Ill. App. 3d 266, 401 N.E.2d 295 (3d Dist. 1980) (see Appendix A). The order of the Illinois Supreme Court denying leave to appeal is not reported, but is attached hereto (see Appendix B).

The opinion of the Appellate Court of Illinois, Third Judicial District, is presented in Appendix A to this petition in "slip opinion" form which is the form of the opinion as initially released by the appellate court as a proposed opinion subject to revision. At the time of the filing of this petition, the reporter of decisions had not yet published the official report containing the opinion in this case. However, the clerk of the appellate court has indicated no changes were made to the slip opinion attached hereto before it was sent to the reporter of decisions for publication.

JURISDICTION

The opinion of the Illinois Appellate Court, Third District, was filed on February 25, 1980. A timely petition for leave to appeal was filed by the People in the Illinois Supreme Court. The order of the Illinois Supreme Court denying the People's petition was entered on May 29, 1980. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3). The instant petition for a writ of certiorari is filed within 60 days of that order.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or

affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

The evidence established that at approximately 6 p.m. on February 26, 1978, Investigator Kenneth Downey (hereinafter referred to as Downey), Investigator Garret McQuire (hereinafter referered to as McQuire), and Deputy Sheriff Mandarino arrived at the defendant's residence. (R.69-70) The purpose for going there was to talk to the defendant, James Dowdell, in connection with a burglary. (R.70) On the same day, Downey had been contacted at his office by a Mr. Saalman who informed him that one of Saalman's employees witnessed the defendant take certain items out of Saalman's residence. (R.71, 73) Downey obtained the defendant's address from Saalman during the conversation (R.95) but at no time was he able to ascertain the defendant's telephone number (R.94).

The officers arrived at defendant's residence and knocked on the door. (R.72) A young lady answered the door. The officers identified themselves and asked if they could speak to the defendant. At this point, the young lady invited the officers inside. The officers entered the apartment, stood inside the doorway (R.72, 109), and observed the defendant sitting in the bedroom (R.72).

The officers identified themselves to the defendant and asked defendant if he would be able to accompany them to the police substation in Crete, Illinois, to assist them with an investigation being conducted. (R.73) Defendant asked Downey what the investigation was about, but was informed that only if he went to the substation would Downey be able to inform him of the nature of the investigation. (R.74-75) Whereupon the defendant stated that he would accompany the officers. (R.110)

After this brief conversation, defendant left the room, unaccompanied by any officer, to get dressed. (R.74, 76, 111-112, 126) When defendant left the room to get dressed, the officers were unable to see exactly where he went. (R.126, 133) After dressing, defendant left with the investigators. (R.77)

Defendant was advised that, if he wished, he could take his own vehicle and meet the officers at the substation. (R.77) However, defendant chose to accompany the investigators in their car rather than drive his own. (R.77) In fact, McQuire sat in the back seat while defendant sat in the front seat of the two-door police vehicle on the way to the Crete substation. (R.113) Normally, if a person is arrested or in custody he is handcuffed and placed in the rear seat. (R.114)

Upon arrival at the Crete substation, defendant, Downey, and McQuire went into one of the offices where defendant was offered a seat. (R.80, 115-116) Downey then informed defendant of his constitutional *(Miranda)* rights. (R.80, 82, 116) McQuire then left the room and Downey informed defendant that the investigation which was being conducted concerned a burglary at the Saalman residence. (R.82, 117)

Upon McQuire's return, defendant requested that he be allowed to speak with Downey in private. (R.82, 117) After McQuire stepped out, defendant informed Downey that he did not want to go to jail and wanted to know what sort of

arrangements could be worked out. (R.83) Downey informed the defendant that he (Downey) could not make any kind of promises. (R.83) After being so informed, defendant said nothing. (R.83) Downey then confronted the witness with Saalman's statement and defendant informed Downey that he had been living with Mr. Saalman and had taken nothing out of the Saalman residence. However, defendant subsequently did advise Downey that he had taken a gun. (R.83) Defendant was then informed that he was going to be charged with the offense of burglary. (R.86)

Downey next asked defendant about the burglary of the Langley residence, to which the defendant replied with a full statement in connection therewith. (R.84) Despite the fact that defendant was informed that he was going to be charged with burglary after he had confessed to the Saalman burglary, defendant continued to make a statement regarding the Langley residence. (R.86) At no time was any force used or were any promises made to the defendant in return for the statement. (R.84)

The evidence also established that at the time the officers went to the defendant's apartment, they did not go there with the intention to arrest defendant, nor did they, in fact, arrest him. (R. 76, 112) If the defendant had not voluntarily accompanied the officers, they would not have arrested him (R.76, 112), as the officers did not have probable cause to effect an arrest at that time (R.76, 86). If defendant had told the officers that he wanted to leave the stationhouse after receiving his rights, the officers would have let him go. (R.86) In fact, if defendant had told the officers to leave the apartment instead of agreeing to go with them to the Crete substation the officers would have left. (R.103-104) However, no such request was ever communicated by the defendant to the officers. (R.113)

The defendant filed a motion to suppress all statements and admissions made during his interrogation by the police and

also all physical evidence obtained as a result thereof. The motion alleged that the police did not have a warrant for the defendant's arrest at the time he was taken into custody and that the police made certain representations and implied promises to the defendant. The motion further alleged that the defendant's statements and the physical evidence were obtained as a result of the representations and implied promises made by the police. (C.24-25) The trial judge found no credibility in either the testimony of the defendant or the young lady who answered the door at the apartment. (R.178, 188) Although the trial judge held that the defendant was not under arrest at the time of his statements (R.180, 188) in accord with the prosecutor's concession that the police did not have probable cause to arrest the defendant at the apartment (R.143, 158), the judge denied the motion to suppress on the basis that the incriminating statements made by defendant at the stationhouse were not a product of the illegal arrest, but were voluntarily made.

The cause proceeded to a bench trial at which the evidence of defendant's statements, as well as the proceeds of the burglary, were admitted over defendant's objection. (R.191-225) The trial judge found the defendant guilty of burglary (R.240), and sentenced him to a two-year term of probation (R.255).

The specific constitutional issue premised upon this Court's decision in *Dunaway* v. *New York* was raised for the first time in the appellate court, since *Dunaway* was not published until after defendant's trial and sentencing.

Relying on *Dunaway,* which it found indistinguishable from the instant case, the Illinois Appellate Court held that, except for the stop-and-frisk exception of *Terry* v. *Ohio,* there were no exceptions to the fourth amendment mandate requiring probable cause for the intrusion on the liberties of individuals and their detention even where a formal arrest is not made. Having so held, and having determined that defendant's initial

detention without probable cause violated his fourth amendment rights, as well as that there was no attenuation of the illegal detention by intervening circumstances sufficient to remove the taint of the illegal detention, the Illinois Appellate Court reversed the trial judge's decision, suppressed the statements and the evidence, reversed defendant's conviction and remanded for a new trial.

The Petitioners herein, the People of the State of Illinois, sought timely leave to appeal to the Illinois Supreme Court which was denied on May 29, 1980.

Subsequent to the denial of the request for leave to appeal to the Illinois Supreme Court, this Court issued its decision in *United States* v. *Mandenhall.* The Petitioners herein requested the Illinois Supreme Court reconsider the denial of leave to appeal in light of *Mendenhall,* but reconsideration was denied on June 26, 1980 (see Appendix B).

REASONS WHY THE WRIT SHOULD BE GRANTED

DEFENDANT WAS NOT UNLAWFULLY SEIZED AND DETAINED WITHIN THE MEANING OF THE FOURTH AMENDMENT FOR PURPOSES OF CUSTODIAL QUESTIONING.

Defendant argued on appeal to the Illinois Appellate Court that the acts of the police constituted an illegal seizure and detention of him for custodial interrogation. To support his fourth amendment argument, defendant relied solely upon this Court's opinion in *Dunaway* v. *New York,* 442 U.S. 200, 60 L. Ed. 2d 824, 99 S. Ct. 2248 (1979). The Petitioners countered, arguing that the defendant had not been seized within the ambit of *Dunaway* or the fourth amendment.

However, the appellate court determined that the trial judge had erred in denying defendant's motion to suppress. In so deciding, the appellate court concluded defendant was detained without probable cause, thus violating his fourth amendment rights, and the evidence resulting therefrom should have been suppressed. The Petitioners maintain in light of this Court's recent opinion in *United States* v. *Mendenhall*, ____ U.S. ____, ____ L. Ed. 2d ____, 100 S. Ct. 1870 (1980), that the appellate court's determination that defendant had been illegally seized and detained is erroneous.

The Petitioners contend that defendant voluntarily chose to accompany the officers to the stationhouse. As defendant's presence at the stationhouse was the result of his own voluntary consent to accompany the officers, he could not and was not seized or detained in violation of his fourth amendment rights. Therefore, premised upon the *Mendenhall* decision, the Petitioners respectfully petition this court for a writ of certiorari.

The evidence adduced at the suppression hearing established that the police were conducting an investigation into certain burglaries. Based upon a solid lead, the focus of the investigation shifted to defendant. Although they lacked probable cause to arrest defendant, the detectives, based upon the lead, still wanted to talk to defendant.

Based upon the substantially reliable information, the detectives went to defendant's apartment to request his presence at the stationhouse for the purpose of questioning in furtherance of the investigation. At the time that the officers went to defendant's apartment, they were not under orders to "pick up" defendant regardless of whether or not he wanted to accompany them. In fact, if defendant had told them that he did not want to go, the officers would have left. Moreover, the officers had to go to defendant's apartment to make the request because they were unable to discern the defendant's telephone number.

Upon their arrival at the apartment, they were invited in. The officers then *asked* defendant if he would be able to accompany them to the stationhouse to assist in their investigation. Defendant agreed to accompany them. Afterwards, defendant left the room (and the officers' sight) unaccompanied by any officer at the time in order to get dressed. Prior to leaving, defendant was advised that he could take his own vehicle if he wished and meet the officers at the stationhouse. However, defendant chose to go with the officers. Even though he was driven to the stationhouse in a police vehicle, unlike an arrested person or one who had indeed been taken into custody, defendant sat in the front seat of the police vehicle from which he could exit the vehicle at any stop.

The facts in the instant case are clearly analogous to the situation presented in *Mendenhall,* in which the court found that defendant had voluntarily agreed to accompany the federal agents to their office. The police in the case at bar, like the agents in *Mendenhall,* merely requested the defendant to accompany them to the stationhouse. Defendant voluntarily agreed to accompany the detectives to the stationhouse. As the court concluded in *Mendenhall:*

* * *

> The question whether the respondent's consent to accompany the agents was in fact voluntary or was the product of duress or coercion, express or implied, is to be determined by the totality of all the circumstances. [Citation.] *** The Government's evidence showed that the respondent was not told that she had to go to the office, but was simply asked if she would accompany the officers. There were neither threats nor any show of force. The respondent had been questioned only briefly, and her ticket and identification were returned to her before she was asked to accompany the officers.

* * *

> [T]he totality of the evidence in this case was plainly adequate to support the District Court's finding that the respondent voluntarily consented to accompany the officers to the DEA office. [27 Cr. L. at 3131.]

It is evident from the language employed in the Court's opinion in *Mendenhall* (as evidenced by the dissent therein) that an exception or limitation was placed upon this Court's recent decision in *Dunaway*. In marking the parameters of *Dunaway*, the Court reiterated the well-established principles of search and seizure. Moreover, as specific as the *Dunaway* decision was on what amounted to illegal police conduct, *Mendenhall* makes clear what constitutes legal and permissive police conduct within the context of the issues raised. The *Mendenhall* decision reaffirmed the long-standing principle that as long as defendant's presence is voluntarily obtained, no violation of an accused's fourth amendment rights occurs.

Defendant's presence at the stationhouse resulted from his voluntary consent to so accompany the officers. As such, defendant was not unconstitutionally seized within the ambit of either the fourth amendment or *Dunaway*. Moreover, this conclusion is not altered by the fact that the detectives did not inform defendant that he did not have to accompany them. As stated by the court in *Mendenhall:*

> Our conclusion that no seizure occurred is not affected by the fact that the respondent was not expressly told by the agents that she was free to decline to cooperate with their inquiry, for the voluntariness of her responses does not depend upon her having been so informed. [Citation.] [27 Cr. Law. at 3130]

As such, the result reached in *Mendenhall* likewise should have been reached in the case at bar.

In contrast to the manner in which the totality of circumstances presented in *Dunaway* established an involuntary seizure, the facts and circumstances presented as a whole in the instant case clearly established that defendant voluntarily con-

sented to accompany the officers to the stationhouse. Based upon the factual scenario presented by the evidence, it is clear that the instant case does not fall within the parameters of *Dunaway*.

Dunaway holds that a person is illegally seized when he is detained for custodial interrogation and the detainment is based on less than probable cause for a full-fledged arrest. The thrust of the holding is aimed at the involuntary and unlawful seizure of a person for the sole purpose of questioning the individual. The Petitioners maintain that the case at bar is not controlled by *Dunaway*, and that an analysis of *Dunaway* establishes how this is so.

The relevant facts in *Dunaway* are as follows: a New York police detective was supplied with certain hearsay information which implicated defendant (Dunaway) in the killing of a pizza parlor proprietor during an attempted robbery. The detective questioned the source of the lead, but was unable to obtain enough information to obtain a warrant for defendant's arrest. Nevertheless, *the detective ordered other detectives to "pick up" petitioner and "bring him in."*

As a result of the order, three detectives located the defendant in a neighbor's home the next morning. *Defendant was taken into custody,* but he was not told that he was under arrest. *The detectives testified that defendant would have been physically restrained if he had attempted to leave.* Defendant was ultimately transported to police headquarters in a police vehicle, placed in an interrogation room and questioned by officers after being given *Miranda* warnings. Defendant waived counsel and eventually made statements and drew sketches that incriminated him in the crime.

Certain points relative to the voluntariness issue become evident from an analysis of *Dunaway*. The Court's determination that there was "little doubt that petitioner (Dunaway) was 'seized' in the Fourth Amendment sense" centered upon their

conclusion that defendant had been "involuntarily" taken to the police station. 99 S. Ct. at 2253. The key factors employed by the Court to support their conclusion were: that the detective in charge ordered subordinates to "pick up" defendant and "bring him in"; defendant was taken into custody; although not told that he was under arrest, defendant would have been physically restrained if he had attempted to leave; and defendant was taken from a neighbor's home and driven to the stationhouse in a police vehicle and placed in an interrogation room for questioning. All of the facts enumerated plus the subjective intent of the officers, when taken as a whole, tend to establish that the officers' conduct exhibited a certain quantum of arrest-like force in obtaining defendant's presence at the police station such as would render his presence involuntary or the product of police coercion. In other words, the evidence established that the officers were fulfilling one apparent goal: to satisfy their supervisor's order to bring defendant in regardless of whether he wanted to come or not. Thus, defendant's presence at the police station could only have been categorized as involuntary. As a result, his involuntary presence at the police station constituted a seizure within the fourth amendment sense. Since the seizure was based upon less than probable cause to arrest, it was unlawful for the police to have seized the defendant solely for the purpose of questioning him.

The tenor of the court's language in *Dunaway* specifically indicated that a violation of the fourth amendment occurs only when a person is *involuntarily seized* for purposes of conducting a *custodial interrogation* when the seizure is based on less than probable cause. It is axiomatic that if an accused voluntarily agrees to accompany police to the stationhouse for purposes of questioning no violation of his fourth amendment rights occurs.

Such is the situation presented in the case at bar.

Unlike defendant in *Dunaway,* defendant Dowdell voluntarily agreed to accompany the officers to the stationhouse. None of the coercive elements exhibited in *Dunaway* are

presented in the case at bar. Moreover, it is clear that this Court *did not hold* that the police may *never* question anyone about a crime unless they have probable cause to arrest that person. Nor did the Court hold that police may not personally approach a suspect and request the latter's presence at the stationhouse for purposes of questioning. As long as defendant's presence was voluntarily obtained, no violation of his fourth amendment rights occurred. Since defendant's presence was voluntarily obtained, *Dunaway* is simply not controlling.

As in *Mendenhall,* defendant in the case at bar voluntarily agreed to accompany the officers after being asked to do so. Unlike *Dunaway,* defendant simply was not unlawfully seized and, accordingly, his fourth amendment rights were not violated. Thus, insofar as it was established that defendant voluntarily accompanied the officers to the stationhouse, and thus his fourth amendment rights were not violated, it was error for the appellate court to have reversed the trial judge's order denying defendant's motion to suppress. Therefore, the Petitioners respectfully request this honorable Court grant a writ of certiorari to review the decision of the Illinois Appellate Court in light of this Court's recent decision in *United States* v. *Mendenhall.*

CONCLUSION

For the reasons stated herein, the Petitioners respectfully request that a writ of certiorari issue and that this Court review the decision of the Appellate Court of Illinois, Third District, which reversed defendant's conviction, vacated the trial judge's order denying defendant's motion to suppress, and remanded the case to the trial court for a new trial.

Respectfully submitted,

The People of the State of Illinois,
Petitioners

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APPENDIX A

Case No. 78-486

Filed 2/25/80

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D. 1980

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

vs.

JAMES DOWDELL,
Defendant-Appellant.

Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois.
Honorable
ANGELO F. PISTILLI
Presiding Judge.

MR. JUSTICE STOUDER PRESIDING delivered the opinion of the court:

After a bench trial in the circuit court of Will County the defendant, James Dowdell, was found guilty of burglary and sentenced to a two year term of probation.

On this appeal the only error urged by defendant is his claim the trial court erred in denying his motion to suppress statements and physical evidence. Defendant argues his detention was not based on probable cause and therefore violative of his Fourth Amendment rights. Further, the statements and physical evidence being the result of a constitutionally impermissible seizure, the statements and physical evidence should have been suppressed.

In support of his suppression motion defendant and his girlfriend, Jasaer Fouad, testified to similar facts. On February 26, 1978 at about 6 p.m. Dowdell and his girlfriend were at her apartment in Crete, Illinois. Two plain clothes officers and one uniformed officer went to the Fouad apartment, knocked and were invited in by Fouad. She was informed they wanted to talk to Dowdell and she went and got him from another room in the apartment. The police officers announced who they were and asked Dowdell to come down to the station because they wanted to ask him some questions. Dowdell asked them what they wanted to question him about but the officers refused to answer, indicating that they needed to question him at the police station. Up to this point the testimony of Dowdell and Fouad and that of officers Downey and McGuire, two of the three police officers, was substantially the same.

However, Dowdell and Fouad testified that the request was made four times and that Dowdell continued to ask the purpose of going to the station with the officers refusing to respond, except to say that questioning could only be done at the police station. According to Downey and McGuire, Dowdell made the request for information only once although they also conceded that they declined to tell the defendant why they wanted him to go to the station except generally to question him. Thereafter defendant got his coat and accompanied the police officers in their squad car to the station, where he was taken to an interrogation room. There he was given and waived his Miranda rights. Defendant was questioned about a burglary not the subject of the instant offense and thereafter he made inculpatory statements about the burglary with which he was charged, and showed the officers where some of the stolen property was located.

According to the police officers Dowdell was not arrested in the apartment or at any time prior to giving the statement and, according to them, if he wished to refuse to accompany them to the police station they had no probable cause for

arresting the defendant for the burglary charged or for any other offense until after he had made his inculpatory statements. The evidence is also undisputed the defendant was never told that he was either under arrest or not under arrest. It is also undisputed defendant was never advised that he need not accompany them to the police station.

Although there is a conflict in the evidence as to whether the defendant was requested to come to the police station once, as the police officers testified, or four times, as the defendant and his girlfriend testified, for the purposes of reviewing the issue presented on this appeal we will consider as true the testimony of the police officers that the request was made only once.

In denying the motion to suppress the statements and physical evidence, the trial court held defendant was not arrested until after he had made his inculpatory statements and, even if the defendant had been arrested improperly prior thereto for want of probable cause, the statements were voluntarily given and hence not suppressable.

According to the defendant he was seized and detained without probable cause therefore for the purpose of custodial questioning in the general investigation of criminal activity. If his detention was violative of his constitutional rights then the statements and physical evidence were tainted with the illegality of the detention and hence should have been excluded from the evidence.

The prosecution, on the other hand, argues "* * * the statements made by defendant were voluntarily given in a non-custodial setting."

In *Brown* v. *Illinois* (1975), 422 U.S. 590, 45 L.Ed.2d 416, 95 S.Ct. 2254, the defendant was arrested in what might be characterized as the usual and obvious manner *i.e,* he was declared under arrest by police officers who identified them-

selves and accompanied the declaration by a show of weapons. The defendant was thereafter handcuffed, taken to the police station in a police car and placed in an interrogation room. Thereafter he was given his Miranda warnings and, having waived his rights, he was questioned and made a written confession of a murder. At a hearing to suppress his confession the evidence showed the police officers had no arrest warrant and had no probable cause for arresting him. Conceding the defendant was arrested and that his arrest was not based on probable cause, the Court in *Brown* was primarily concerned with the consequences of those facts.

In the more recent case of *Dunaway* v. *New York* (June 5, 1979), ____ U.S. ____, ____ L.Ed.2d ____, ____ S.Ct. ____, decided after the trial in the case at bar, the Court considered further the consequences of the absence of probable cause for arrests or detentions where the fact of an arrest was less obvious. In *Dunaway* the defendant was approached at his home, requested to come to the police station for questioning, transported to the police station in a police car, taken to an interrogation room, advised of his Miranda rights which he waived, and made inculpatory statements and drawings. The defendant was neither advised that he was under arrest nor that he was not under arrest at the time he left his home or during transportation to the police station and was not advised that he was under arrest until after he made the inculpatory statements. The police officers testified if the defendant had declined to accompany them to the police station they would have arrested him. It was also conceded the officers had no probable cause for arresting the defendant until after he made his inculpatory statements.

Both parties to this appeal recognize the *Dunaway* case is crucial to the resolution of the issues presented on this appeal. We believe the facts in the instant case are legally indistinguishable from those in *Dunaway*. It is the intrusion on the liberty and privacy of a person and his detention for

purpose of custodial questioning without probable cause therefore that is condemned by the Fourth Amendment in *Dunaway*. In *Dunaway*, the Court decided "the question of the legality of custodial questioning on less than probable cause for a full-fledged arrest." The Court answered this question by declaring that except for the "stop and frisk exception" (*Terry* v. *Ohio* (1968), 392 U.S. 1, 20 L.Ed.2d 889,88 S.Ct. 1868) there were no exceptions to the Fourth Amendment mandate requiring probable cause for the intrusion on the liberties of individuals and their detention even where a formal arrest was not made.

The prosecution seeks to distinguish the facts in *Dunaway* from those in the instant case by pointing to the fact in *Dunaway* that the police officers testified they would have arrested the defendant had he been otherwise unwilling to accompany them to the police station. According to the prosecution in the instant case, since the police officers testified they would not have arrested the defendant if he refused to accompany them a different result should insue. However, we fail to see how the results should depend on the uncommunicated ideas or intentions of the police officers. No particular significance was attached to these uncommunicated facts in the *Dunaway* opinion and the emphasis is on the absence of any communications by the police officers to the defendant that he was not under arrest. This was not a casual telephone inquiry or an informal visit with the defendant. It was a deliberate special trip to an apartment where the defendant was thought to be by three police officers suspicious of the defendant but without probable cause for his arrest. To suggest the defendant was not seized or detained merely because after the fact the police officers disclaimed any intention of arresting the defendant would permit the evasion of Fourth Amendment protections. If the police officers intended to convey any impression other than that the defendant's detention was intended, he could have been told that he was not under arrest and he need not come with them to the police station. We are not saying it is

indispensable in any case that the officers interrogating an individual must advise him orally that he is not under arrest, etc. It is rather the totality of what transpired which determines, as noted in *Dunaway*, whether or not a motion to suppress should be granted. Advising the defendant of his Miranda rights at the police station is only consistent with the rule the defendant was in custody contrary to the assertion of the prosecution.

Without repeating the extensive analysis in *Dunaway*, we conclude the defendant's initial detention without probable cause violated his Fourth Amendment rights and the evidence resulting therefrom should be suppressed unless attenuating circumstances intervened.

According to the standards set forth in *Dunaway*, the statements by the defendant were not made under such circumstances that the effect of the illegal detention was attenuating. In this connection it should be recognized that whether the statements were voluntary under the Fifth Amendment standards in only a threshhold question and even if voluntary there must be intervening circumstances sufficient to remove the taint of the illegal detention. We find no such circumstances in the instant case and the facts are so similar to those in *Dunaway* that we conclude the motion to suppress should have been granted.

For the foregoing reasons the judgment of the circuit court of Will County is reversed and this cause is remanded for further proceedings consistent with the views expressed herein.

Reversed and remanded.

ALLOY, J., and BARRY, J. concur.

APPENDIX B

STATE OF ILLINOIS

OFFICE OF

CLERK OF THE SUPREME COURT

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AREA CODE 217
782-2035

SPRINGFIELD
62706

CLELL L. WOODS
CLERK

June 26, 1980

State's Attorneys Appellate
Service Commission
628 Columbus Street
Ottawa, IL 61350

In re: People State of Illinois, petitioner,
vs. James Dowdell, respondent.
No. 53314

Gentlemen:

The Supreme Court today made the following announcement concerning the above entitled cause:

"The motion by petitioner for leave to file a motion for reconsideration of the order denying petition for leave to appeal and, if granted, for stay of mandate pending reconsideration of petition is denied."

In view of the foregoing, the mandate of this Court has today been issued to the Clerk of the Appellate Court for the Third District.

Very truly yours,

Clerk of the Supreme Court

CLW:gn
cc—State Appellate Defender
Ottawa, IL
Hon. William J. Scott
Attorney General
Hon. Edward F. Petka
State's Atty., Will Co.